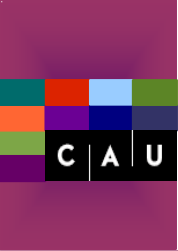


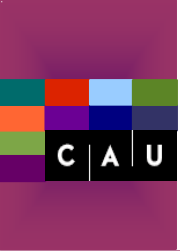
Do we need green competition policy?

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Introduction

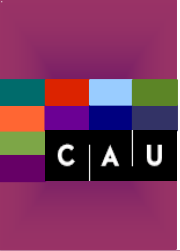
- Recently, there are calls for greener policies in several policy fields:
 - Energy policy (of course)
 - National fiscal policies
 - (National and European) industrial policies
 - Competition policy
 - Monetary policy
- In particular, there was an initiative by former MEP Sven Giegold (now vice-minister of economic affairs of Germany) to develop “green competition policy”



Introduction

- For most of this Webinar the discussion is about the application of Art. 101 (3),
- and the draft of new guidelines to deal with horizontal agreements.
- However, the general discussion is much broader.





Introduction

- In a speech from Sept. 20, 2021, competition policy **commissioner Margaret Vestager** stressed:

*“The starting point here is that a **green competition policy still has to be** – well, a **competition policy.....and environmental taxes and rules** make it expensive for companies to operate in ways that harm the planet.”*

- This expresses the spirit of the **Tinbergen rule**:
 - Each market imperfection should have its suitable instrument!



Recall the tasks of Competition Policy

- Four columns of (most) national competition laws:
- **Prohibition of (cartel) agreements that restrict, prevent or distort competition.**
- **Prohibition of the abuse of a dominant position**
- **Merger control**
- **(Fair) procurement and tender rules**
- Additionally in EU-competition legislation: **Control of State Aid.**

The Pigouvian paradigm

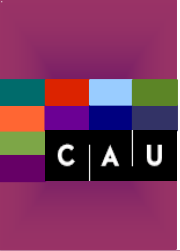
- The Pigouvian paradigm teaches us:
- If markets are competitive,
 - a tax on externalities (or a corresponding quantity instrument such as emissions trading) leads to the first best outcome,
 - given the tax is set at the right level (=marginal damage)
- Market imperfections through imperfect competition, by contrast, should be addressed by competition policy.
- Q: Are we talking here about second-best policies when environmental policies fail?



Environmental Policy under Imperfect Competition



- **Buchanan** (1969) criticized the Pigouvian paradigm when there is **imperfect competition**,
 - because a monopolist produces too little and thus pollutes less than firms in competition.
- See also **Solow** (1974) on a monopolist exploiting resources slower than competitive markets.
- Barnett (AER 1980) shows that for a monopolist the **(second-best-optimal) emission tax falls short of marginal damage.**
- This holds for many kinds of imperfectly competitive market structures:
- → Gradual adaptation of Pigouvian taxes to market structure is possible.



Second best-optimal competition policy in order to correct for imperfect environmental policy?

- But does the converse also hold?
 - Can/should more lenient competition policy compensate for too lenient environmental policy?
- **Abuse of a dominant position:** one can show theoretically that, when emission taxes are too low, a regulator should allow for a greater price cap to regulate a monopolist.
- By contrast, the welfare effects of **horizontal agreements** prior to price competition for clients are ambiguous.

See Requate 2022, mimeo

Agreements subject to Art 101 (3)

- Art 101 (3) allows for horizontal agreements if the benefits to consumers are as least as large as the the anti-competitive effects.
- The draft of new guidelines tries to extend the field of applications to horizontal agreements on **sustainability issues** (reduce negative externalities).
- The guidelines in particular give guidance on how to **measure** such benefits (-> Roman Inderst's talk)
 - but still stress that the benefits in some way have to accrue to the current generation of consumers!



Agreements subject to Art 101 (3)

- So strictly speaking, the new guidelines **rule out horizontal agreements that benefit future generations only.**
- M. Vestager: *“The third kind of benefit comes when an agreement helps **society as a whole** – like an agreement to cut the pollution or carbon emissions from a product. Of course, those benefits are welcome. The trouble is that to get a better environment for everyone, a limited set of consumers have to pay more. And that could mean **those agreements contradict a fundamental principle of the competition rules** – the principle that restricting competition for a product can only be justified if the consumers of that product are not worse off on balance.”*



Agreements subject to Art 101 (3)

- Does this mean we need to extend Art 101 (3) to benefits through GHG emission reductions?
- Here we need to be careful:
 - Ubiquitous pollutants such as GHGs can be much better addressed by simple instruments such as taxes and tradable permits.
 - Unilateral agreements by firms may increase total abatement costs without lowering total emissions,
 - in particular if regulated by the EU-ETS.



Merger Control



- All criteria applied to weighing benefits against anti-competitive effects should also be applied to **horizontal mergers**.
- However, in contrast to National (e.g. the German) merger control, the European Merger Control Directive does not allow for such weighing.
- That should be changed, not only for mergers for the sake of environmental improvements.

Merger Control and killer acquisitions



- M. Vestager: *“I sympathise with the worry that big businesses could buy up green innovators and kill their new ideas, while those companies are still too small for the mergers to have to be notified.”*
- However, the problem of **killer acquisitions** is a general one not only applying to green innovations.

State aid



- M. Vestager: “*We consulted on a set of draft guidelines on state aid for **climate, energy and the environment** ... Those new rules will vastly expand the scope for using state aid to help reach the goals of the Green Deal .*”
- However, the new rules should expand the scope in general, notably to **key technologies** and **break through innovations**.

Finally: vertical agreements

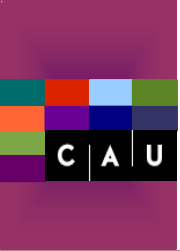


- There may be also vertical agreements that are anti-competitive (e.g. exclusive dealing), but may be justified, for example by excluding dealers that supply unsustainable pre-products.
- Similar guidelines need to be developed for such cases.

Conclusions

- Competition policy should mainly deal with protecting competition.
- Environmental policy should deal with curbing harmful emissions.
- The current legislation allows for many horizontal agreements. The new guidelines help to quantify benefits in a broad sense, but these are restricted to the currently living consumers.
- For horizontal agreements to reduce GHGs. emissions, Art 101 (3) needs to be reformed.
- But is it necessary?





Thank you!